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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th August 2011

No. 7639—li/1-(BH)-37/2002-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th March 2011 in I. D. Case No. 10/2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Central Electrical Division, Balasore of NESCO Ltd. and their workers represented through NESCO Workers Employees Union was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 10 of 2003

The 10th March 2011

Present :

Shri S. K. Dash,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of Central Electrical . . . First-party Management
Division, Balasore of NESCO Ltd.

And

Their workmen represented through . . . Second-party Workmen
NESCO Workers Employees Union.

Appearances :

Shri D. N. Naik	. . .	For First-party Management
Shri G. K. Mohapatra	. . .	For Second-party Workmen

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act have referred the matter in dispute to this Court vide Order No. 1275—li/1(BH)-37/2002-L.E., dated the 11th February 2003 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

"Whether the action of the management of Executive Engineer, Central Electrical Division, Balasore (NESCO) ignoring promotion to Shri Lal Mohan Sahu and 13 other Helpers to the post of Lineman 'C' with effect from the 24th May 2002 (enclosed in Annexure-A) is legal and/or justified ? If not, what relief they are entitled to ?"

3. The case of the workmen in brief is that they were working under the management as Helper since long. The Helpers who have qualified after passing examination of Lineman 'C' permit examination from Electrical Inspector, Orissa but the seniority list was prepared as per date of entry in service. As per the circular of the GRIDCO, practical mark 30, voice mark 20 and other mark are 30 regarding seniority. The Committee has not taken any practical examination. The Committee was not a Statutory Committee as per GRIDCO circular. The Committee has not taken seniority into count and also the practical examination. When the management has absorbed the junior workmen namely Bipin Jena, Kartik Barik, Rabi Narayan Jena and Krushna Prasad Mohanty in the same cadre, the workmen have raised an industrial dispute before the labour authority and when the conciliation failed, the matter was informed to the Government and this reference has been received and this industrial dispute case has been initiated wherein the workmen have prayed to absorb the workmen in the post of Lineman 'C' with effect from dated the 24th May 2002 with all service benefits.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workmen. According to it, the management has decided to fill up the vacant posts of Lineman 'B' and Lineman 'C' from among the eligible Lineman 'C' and Helpers of the establishment by means of conducting Trade Test on the 23rd April 2002 and 24th April 2002. For the purpose of Trade Test, the xerox copy of syllabus communicated to all the eligible candidates through their respective Junior Engineers/Section Officers. The said Trade Test was deferred and subsequently it was held on the 17th May 2002 and 18th May 2002. Out of existing 275 Nos. of Helpers as on the date in the establishment, only 79 Nos. of Helpers were called for appearing the Trade Test for promotion to the post of Lineman 'C' basing on their prerequisite qualification/condition as stated in Clause 6 of Letter No. 12872 (120), dated the 20th May 1988 of the Secretary, OSEB and the present workmen were also included in the said list for Trade Test. The Selection Committee/Recruitment Committee comprising of Executive Engineer, CED, Balasore being the Chairman, representative of the Managing Director, NESCO being member and the representative of the Superintending Engineer, Electrical Circle, Balasore being member conducted the Trade Test on the 17th May 2002 and 18th May 2002 as per guidelines to select the Helpers for the post of Lineman 'C'. Out of 79 number of Helpers, five persons did not appear for Trade Test including the workman Lal Mohan Sahu and rest other 13 workmen did not qualify in the Trade Test. Therefore their case

could not be considered to the post of Lineman 'C'. The case of the workmen were never ignored. On the other hand, the claim of the workmen are not justified in the eye of law. So in this circumstances the management has prayed for answering the reference in negative.

5. In view of the above pleadings of the parties, the following issues are settled :—

ISSUES

- (i) "Whether the action of the management of Executive Engineer, Central Electrical Division, Balasore (NEESCO) ignoring promotion to Shri Lal Mohan Sahu and 13 other Helpers to the post of Lineman 'C' with effect from the 24th May 2002 (enclosed in Annexure-A) is legal and/or justified ?
- (ii) If not, what relief they are entitled to ?"

6. In order to substantiate their pleas, out of 14 workmen, three workmen have been examined as W. Ws. 1 to 3 and proved documents marked as Exts. 1 to 6. Similarly the management has examined its Executive Engineer as M. W. 1 and proved documents marked as Exts. A to G.

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion for convenience.

It has been argued on behalf of the workmen that without considering their seniority, the junior Helpers were promoted to the post of Lineman 'C' which is illegal. The workmen have got the electrical license as Lineman 'B' issued by the Electrical Inspector, Government of Orissa. On the other hand, it has been argued on behalf of the management that the eligible candidates have been intimated through the respective Junior Engineers and the Trade Test was held on the scheduled date fixed after deferring from the initial date. The workman Lal Mohan Sahu did not appear in the Trade Test and other 13 workmen were not qualified in the said Trade Test. Twenty-two candidates were passed in the Trade Test who were promoted to the post of Lineman 'C' perused the documents marked as exhibits on behalf of both the parties.

8. Ext. 1 is the xerox copy of seniority list of Helpers. Ext. 3 is the xerox copy of office order regarding recommendation of Selection Committee regarding promotion from the post of Helper to the post of Lineman 'C'. Similar Ext. 4 is the xerox copy of office order regarding recommendation of Selection Committee regarding promotion of Line Helper to the post of Lineman 'C'. Exts. F and G are also the xerox copies of office orders regarding recommendation of Selection Committee for promotion of Helpers to the Post of Lineman 'C' category. Ext. D is the xerox copy of letter regarding filling up posts under works and technical classification syllabus for Trade Test and procedure to be adopted thereof. So when Lal Mohan Sahu did not appear in the Trade Test and other 13 workmen did not qualify in the Trade Test held on the 17th May 2002 and 18th May 2002, they are not eligible to get the post of Lineman 'C'. So rightly they were not promoted to the post of Lineman 'C' as argued on behalf of the management. On the other hand, it has been argued on behalf of the workmen that a senior Helper should have been absorbed in Lineman 'C' as his juniors have been availed the opportunity. Further according to the workmen no practical examination was held. According to the management when the pre-requisite qualifying marks in the Trade Test is primary to be promoted to the post of Lineman 'C', the seniority is secondary. Unless one secures the qualifying marks in the Trade Test his case cannot be taken into consideration for promotion to the post of Lineman 'C', ever if he is seniormost among the Helpers. Therefore the workmen are not

promoted to the post of Lineman 'C' as one of them has not appeared in the Trade Test and other 13 have not been qualified in the said Trade Test. So their promotion to the post of Lineman 'C' are not to be taken into consideration at all and accordingly they were not promoted to the post of Lineman 'C'. According to the materials available, I am agreed with the submission of the management and of the opinion that the workmen have no case at all to be promoted to the post of Lineman 'C' as one of the workman namely Lal Mohan Sahu has not appeared and others have not been qualified in the Trade Test. Therefore on careful consideration of all the materials available in the case record, I am of the opinion that the action of the management ignoring promotion to the post of Lineman 'C' with effect from the 24th May 2002 is legal and justified and the workmen are not entitled to get any relief in this case. Hence both the issues are answered accordingly.

9. Hence Ordered :

That the action of the management of Executive Engineer, Central Electrical Division, Balasore (NESCO) ignoring promotion to Shri Lal Mohan Sahu and 13 other Helpers to the post of Lineman 'C' with effect from the 24th May 2002 (enclosed in Annexure-A) is legal and justified. The workmen are not entitled to get any relief in this case.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
10-3-2011
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
10-3-2011
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

T. K. PANDA
Under-Secretary to Government